



**Women Enterprise Fund v Adok Timo Limited & 5 others (Civil Suit E069 of 2020)  
[2024] KEHC 15603 (KLR) (Commercial and Tax) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E069 OF 2020  
PM MULWA, J  
DECEMBER 5, 2024**

**BETWEEN**

**WOMEN ENTERPRISE FUND ..... PLAINTIFF**

**AND**

**ADOK TIMO LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ARCHDIOCESE OF KISUMU ..... 2<sup>ND</sup> DEFENDANT**

**MOST REV. ZACHAEUS OKOTH ..... 3<sup>RD</sup> DEFENDANT**

**MR. SAMUEL OKELO DEYA ..... 4<sup>TH</sup> DEFENDANT**

**FR. JOHN OBALLA OWAA ..... 5<sup>TH</sup> DEFENDANT**

**FR. MICHAEL NDIEGE AIDI ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff vide the plaint dated 6<sup>th</sup> March 2020 filed a suit against the Defendants seeking judgment jointly and severally for the sum of Kshs. 21,542,161/=, claiming this amount was due for various loan facilities as of 30<sup>th</sup> January 2020.
2. The Defendants in their joint statement of defence raised a Notice of Preliminary Objection arguing that the suit is fatally defective and statute- barred under the *Limitation of Actions Act*.
3. By the directions of this court, the objection was heard through written submissions. I have considered the arguments and evidence presented by the parties. The issue for determination is whether the objection is merited.



4. The Defendants in this case are contesting the validity of a loan facility executed on 26<sup>th</sup> August 2009 which was supposed to be repaid within three years. They argue that a subsequent loan facility executed on 11<sup>th</sup> March 2011 had a repayment deadline of August 2012. They assert that the default on these loans occurred in 2012, marking the point when the cause of action accrued. Consequently, they claim that the suit, filed on 6<sup>th</sup> March 2020 is time-barred under the applicable laws concerning the limitation period for such contracts.
5. Additionally, the Defendants contend that the cause of action arose in Kisumu, where the 1<sup>st</sup> Defendant's office is located and that all Defendants reside in Kisumu. They reference Section 15 of the *Civil Procedure Act*, which stipulates that suits must be filed either where the cause of action arose or where the defendants reside.
6. The Plaintiff contends that the Defendants' Preliminary Objection does not meet the established criteria for such objections as outlined in the Mukisa Biscuit case. That a preliminary objection must consist of a pure point of law that does not involve any disputed facts. The Plaintiff argues that since the facts presented in the plaint are denied, it follows that the same cannot be resolved without examining evidence, thus failing to qualify as a true preliminary objection.
7. The Plaintiff asserts that the 2<sup>nd</sup> loan was disbursed on 6<sup>th</sup> March 2011 and therefore the cause of action arose on 7<sup>th</sup> June 2014. According to Section 4(1) of the Limitations of Actions Act, the Plaintiff's suit was within the six-year limitation period, specifically on 6<sup>th</sup> March 2020. Therefore, they argue that their claim is not statute-barred and should be allowed.
8. The Plaintiff further argues that acknowledgments made by the Defendants in the letters dated 14<sup>th</sup> January 2013 and 12<sup>th</sup> November 2015 effectively reset the limitation period for these claims. They assert that these acknowledgments were made after the original limitation had expired but still serve to extend their right to bring forth a claim.
9. The Plaintiff challenges the assertion that the cause of action arose in Kisumu. They argue that there is no documentation indicating as much. The certificate of incorporation for the first Defendant does not specify a registered office location. The Plaintiff maintains that merely having a registered office does not determine jurisdiction for filing suit. They argue that filing in Nairobi has not impeded the Defendants' rights to access justice.

### **Analysis and determination**

10. The Courts have consistently upheld that a preliminary objection should be a pure point of law capable of disposing of the matter without delving into factual disputes. This principle was established in the landmark case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) 1 EA 696 which defines such objections as those that do not require any evidence to substantiate the claims.
11. In evaluating the merits of the objection, this Court must determine whether the claim was initiated within the allowable time frame set by law, if not the claim would be statute-barred, and the court would lack jurisdiction to proceed with the same. The Court will also consider whether there was any acknowledgment or part payment by the Defendants which could reset the limitation period.



12. In *Gathoni vs Kenya Co-operative Creameries Ltd* [1982] KLR 104, Potter, JA at page 107 expressed himself thus:

“The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
13. The *Limitation of Actions Act* stipulates the time limit within which legal actions must be initiated. Specifically, Section 4(1) indicates that actions founded on contract must be brought within six (6) years from the date the cause of action arose. In this case, the Plaintiff appreciates this position but submits that the acknowledgments made by the Defendant in letters dated 14<sup>th</sup> January 2013 and 12<sup>th</sup> November 2015 reset the limitation period for these claims.
14. Under Section 23 of the *Limitation of Actions Act*, an acknowledgment by the defendant that a debt or claim is owed can effectively restart the limitation period for bringing a legal action. This principle is based on the understanding that such acknowledgments as viewed has an implicit acceptance of the claim, thereby indicating that the cause of action remains active.
15. The Court of Appeal in *Kisii County Government v Masosa Construction Company Ltd* (2015) eKLR, in regard to when a cause of action is deemed to have arisen, held as follows:

“That letter, written during the pendency of the proceedings in the lower court, undoubtedly emanated from the Council being the ‘person liable or accountable’ for the debt within the meaning of Section 23 of the *Limitation of Actions Act* Cap 22. It acknowledges the respondent’s debt of Kshs. 15,556,986.70. The learned Judge was therefore right in taking the view that the respondent’s claim, which was otherwise statute barred, was revived by dint of section 23 of the *Limitation of Actions Act* cap 22.”
16. In addressing the issue of whether the claims regarding the loans dispersed on 29<sup>th</sup> October 2009 and 29<sup>th</sup> April 2010, are statute -barred, I need to analyse the relevant limitation laws and the impact of the Defendant’s acknowledgment of the alleged debt. These loans were due for repayment in 3 years from their respective disbursement dates. Thus, the causes of action accrued on 30<sup>th</sup> October 2012 and 30<sup>th</sup> April 2013. The limitation period for initiating the claims would ordinarily expire on 30<sup>th</sup> October 2018 and 30<sup>th</sup> April 2019 respectively.
17. However, the letters dated 14<sup>th</sup> January 2013 and 12<sup>th</sup> November 2015 by the Defendant occurred before the expiry of the limitation period and therefore served as an acknowledgment of the debt, thus resetting the limitation period.
18. It is my finding, therefore, that the claim filed on 6<sup>th</sup> March 2020 is indeed valid and not statute barred.
19. The next issue is whether the cause of action occurred in Kisumu. It is trite that jurisdiction is everything as held in *Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd* 1989 eKLR and the court must satisfy itself it has jurisdiction before proceeding with a matter.
20. A court’s jurisdiction flows from either the *constitution* or legislation or both. Section 15 of the *Civil Procedure Act* states that suits must be instituted where either the defendant resides or where any part of the cause of action arose. In keeping with the constitutional provisions in Articles 48 and 50 on access to justice and fair hearing, the High Court has stations and sub-registries in various towns which constitute geographic areas to indicate territorial jurisdiction and served by specific stations.



21. While this court acknowledges its jurisdiction to adjudicate the matter at hand, such jurisdiction may be constrained by the territorial limits. The Defendants are residents of Kisumu, where the 1<sup>st</sup> Defendant's registered office is located, indicating that the cause of action arose in Kisumu. The Plaintiff has not provided sufficient justification for why the suit was instituted in Nairobi.
22. In the interest of expeditious justice and to guard against undue delay, I find that the appropriate court with the territorial jurisdiction to hear the case is the Kisumu High Court. Consequently, Nairobi HCCOMM E069 of 2020 is hereby transferred to the High Court in Kisumu for hearing and determination.
23. There shall be no orders as to costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**P.M. MULWA**

**JUDGE**

**In the presence of:**

Mr. Kiptum for Plaintiff

Mrs. Owino for Defendants

Court Assistant: Carlos

